IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

STATE OF ARIZONA,

Petitioner,

v.

ISAAC EVANS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

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QUESTION PRESENTED

Where evidence has been seized incident to an arrest based upon a police computer record of an open warrant that had actually been quashed 17 days earlier, does the exclusionary rule require suppression of the evidence regardless of whether police personnel or court personnel were responsible for the quashed warrant's continued presence in the police computer record?

PARTIES

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

Petitioner, the State of Arizona, respectfully requests that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Arizona.

OPINIONS BELOW

The reported opinion of the Supreme Court of Arizona, State v. Evans, ___ Ariz. ___, 866 P.2d 869 (1994), affirming the grant of Respondent's motion to suppress, is reproduced in Appendix A.

The reported opinion of the Arizona Court of Appeals, State v. Evans, 172 Ariz. 314, 836 P.2d 1024 (Ct. App. 1992), reversing the trial court's grant of Respondent's motion to suppress, is reproduced in Appendix B.

STATEMENT OF JURISDICTION

The opinion of the Supreme Court of Arizona was filed on January 13, 1994. This petition is filed within 90 days of that judgment as required by Rule 13 of the Rules of The Supreme Court. Therefore, jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The State charged Respondent Isaac Evans with possession of marijuana, a class 6 felony. Prior to trial, Evans filed a motion to suppress the marijuana, arguing that it was the fruit of an unlawful arrest.

On April 15, 1991, the trial court conducted an evidentiary hearing on the motion to suppress. Officer Bryan Sargent of the Phoenix Police Department testified

that on January 5, 1991, at approximately 6:30 p.m., he was parked on Washington Street in front of the main police station when he saw a car travelling the wrong way on Washington, which is a one-way street. (R.T. of Apr.15, 1991, at 5-6.) Officer Smith turned on his overhead lights, made a U-turn, and stopped the car. (Id., at 6.)

Both the driver of the car, Evans, and Officer Sargent got out of their vehicles and walked towards each other. (Id., at 6-7.) The officer asked Evans for his driver's license, and Evans replied that he did not have one because it had been suspended. (Id., at 7.) Officer Sargent then obtained Evans' name, and ran the name on the computer in his patrol car. (Id.)

The computer search showed that Evans' license had been suspended. (Id., at 8.) The search also showed that Evans had an

outstanding misdemeanor warrant for his arrest, although it did not show what the warrant was for. (Id.) Officer Sargent would not have arrested Evans for driving on a suspended license, but decided to arrest him because of the warrant. (Id., at 13.)

Officer Sargent went back to Evans and told him he was under arrest. (Id., at 8.) Evans' left hand was clenched into a fist, making it difficult for the officer to handcuff him. (Id., at 9.) The officer asked Evans twice to relax his hand so that he could put the handcuffs on. (Id.) When Evans finally opened his left hand, Officer Sargent saw a handrolled cigarette fall to the ground. (Id.)

While Officer Sargent put Evans in the back seat of his patrol car, the officer's partner picked up the cigarette. (Id., at 9-10.) After looking at the cigarette and

noticing that it smelled like marijuana, Officer Sargent searched Evans' car. (Id., at 10.) He found a baggie of marijuana under the passenger seat. (Id., at 11.) He also found rolling papers and marijuana residue in the purse of the woman who had been sitting in the passenger seat. (Id., at 11.)

After the arrest, Officer Sargent contacted his I-Bureau about the warrant, and was told that the warrant was still good. (Id., at 11-12.)

The State also called Frances Crossman, the chief clerk of the East Phoenix Number One Justice Court. Ms. Crossman brought records from the justice court regarding the warrant on Evans. (Id., at 16.) She testified that Evans had several traffic tickets and failed to appear in the justice court on December 12, 1990. (Id., at 17-18.) Before issuing a bench warrant, the

clerk checked to make sure that Evans was not in custody elsewhere. (Id., at 18.) Upon learning that Evans had been released on December 5, 1990, a bench warrant was issued on December 13, 1990. (Id., at 18-19.) On December 19, 1990, Evans appeared before a pro tem judge, who released him on his own recognizance and quashed the warrant. (Id., at 19.)

Ms. Crossman testified that the justice court's standard procedure for quashing a warrant includes calling the warrants section of the Maricopa County Sheriff's Office and advising them that the warrant had been quashed. (Id., at 19, 25.) The clerk making that call then makes a note that the call has been made. (Id., at 19.) The note also indicates the person at the Sheriff's Office to whom the clerk spoke. (Id.)

Evans' justice court file contained no

note indicating that the Sheriff's Office had been called about the quashing of the warrant. (Id., at 19, 22.) Ms. Crossman concluded the call had not been made. (Id., at 19, 21.) She also noted that Evans' case was unusual because it involved a pro tem judge who had not made the notation in the file regarding the quashing of the warrant that the justice of the peace would have made. (Id., at 23, 25-26.) After learning that the Sheriff's Office had shown that Evans' warrant was outstanding after the justice court had quashed it, Ms. Crossman searched all the files to make sure that no other errors had been made. (Id., at 27.) This search discovered that on the same day that Evans' warrant had been quashed, the files in three other cases in which warrants had been quashed contained no notes showing that the Sheriff's Office had been informed. (Id., at 27-28.)

The State also called Emily Luna, a records clerk with the Maricopa County Sheriff's Office. She testified about the Sheriff's Office procedure when it receives a call that a warrant has been quashed. The person receiving the call gets the "recall warrants list," and notes the date and time that the call was received, the name of the person making the call, and the court that the call is from. (Id., at 30.) The Sheriff's Office also asks for the first, last and middle names of the person named in the warrant, his date of birth, and the warrant number and the date it was issued. (Id.) The Sheriff's Office then pulls the active file and verifies that the information received matches that in the file. (Id.) It then makes notations in the active file, and makes an entry on the computer to clear the warrant from the system. (Id., at 30-31, 36.) After clearing

the warrant, the Sheriff's Office runs a warrant check to make sure the quashed warrant has been cleared. (Id., at 31.)

Ms. Luna checked the Sheriff's Office records regarding the warrant on Evans. (Id.) The records did not show that a call was ever received quashing that warrant. (Id., at 34.)

The defense presented no evidence at the suppression hearing. (Id., at 38.) After hearing argument from the attorneys, the trial court granted the motion to suppress. (Id., at 46.)

The State appealed from this ruling. On May 19, 1992, Division One of the Arizona Court of Appeals reversed. The court of appeals found that the police officers' conduct was objectively reasonable, that the clerical error in failing to note that the warrant had been quashed was outside the control of the Phoenix Police Department,

and that therefore the purpose of the exclusionary rule would not be served by suppressing the marijuana. The court of appeals also held that Arizona's "good faith exception" statute (Ariz. Rev. Stat. Ann §13-3925) applied and required reversal of the trial court's suppression order. One member of the three-judge court of appeals panel dissented.

Evans then filed a petition for review by the Arizona Supreme Court. The supreme court took review and on January 13, 1994, filed an opinion vacating the court of appeals' decision. The supreme court held that even if the responsibility for the computer error rested with the justice court, the exclusionary rule applied and required suppression of the evidence.

Justice Frederick J. Martone dissented, disagreeing with the majority's conclusion that the source of the computer error was

irrelevant. He found that the exclusionary rule is properly limited to police misconduct, and therefore would have remanded so that specific findings could be made regarding the source of the computer error.

REASONS FOR GRANTING THE WRIT

In this case, a police officer made a valid traffic stop of Evans, who was driving the wrong way on a one-way street. Evans then admitted a second violation of the law when he told the officer that his driver's license had been suspended. By using the computer in his patrol car, the officer confirmed that Evans' driver's license was indeed suspended. He also learned from that computer check that there was an outstanding warrant for Evans' arrest. The warrant was present in the computer system because the Maricopa County Sheriff's Office had placed it there. The Maricopa County Sheriff's Office placed

the warrant in the computer system because of information it had received from the issuing justice court. Based on the available information regarding the warrant, the officer informed Evans of the warrant and arrested him. Evans said nothing to the officer regarding the quashing of the warrant. Incident to Evans' arrest, the officer seized marijuana. The officer even checked with his own police department's I-Bureau after the arrest, and was again told that there was an outstanding warrant for Evans' arrest.

Although Officer Sargent did nothing wrong, both the trial court and the Arizona Supreme Court penalized him by applying the exclusionary rule and suppressing the marijuana he seized. They did this because, in reality, the warrant had been quashed 23 days earlier, even though the arresting officer had no way of knowing this.

Evidence presented at the hearing on the motion to suppress strongly suggested that the justice court was to blame for the warrant's continued presence in the computer system after it had been quashed. The chief clerk of the justice court testified that the justice of the peace customarily made a notation in the file when he quashed a warrant. This notation cued the justice court personnel to call the Maricopa County Sheriff's Office and tell them that the warrant had been quashed. Evans' warrant, however, was quashed by a pro tem justice of the peace, who did not make the customary notation in the file. A search of the justice court files revealed that the same pro tem justice of the peace had quashed three other warrants on the same day as Evans', and that all three of those warrants remained in the computer system. Both the trial court and the Arizona Supreme Court

found that even if the justice court was responsible for the error, the exclusionary rule required suppression of the marijuana.

This Court should grant this petition for writ of certiorari because the Arizona Supreme Court has decided a federal question (the application of the exclusionary rule) in a way that conflicts with applicable decisions of this Court. The Arizona Supreme Court based its application of the exclusionary rule on the fact that a Fourth Amendment violation occurred: Evans was unlawfully arrested on a warrant that had been quashed. This Court, however, has held that because the exclusionary rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, and not a personal constitutional right of the party aggrieved, the exclusionary sanction need not be imposed every time Fourth Amendment

rights are violated by police conduct. United States v. Leon, 468 U.S. 897, 906 (1984).

The Arizona Supreme Court also held that it was irrelevant whether police officers were to blame for the error that caused the unlawful arrest. This conflicts with this Court's decision in United States v. Leon, where it stated that the exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates, and that therefore penalizing an officer for a magistrate's error cannot logically contribute to the deterrence of Fourth Amendment violations. Id., 468 U.S. at 916, 921. See also Michigan v. Tucker, 417 U.S. 433, 446 (1974); United States v. Calandra, 414 U.S. 338, 347 (1974).

This Court should also grant this petition for writ of certiorari because

state and federal appellate courts have issued conflicting decisions on this issue. Some courts have followed United States v. Leon and its good faith exception doctrine, and found that the purpose of the exclusionary rule is not served by suppressing evidence seized under circumstances similar to those present in this case. See United States v. De Leon-Reyna, 930 F.2d 396, 401 (5th Cir. 1991) (warrantless arrest upheld where officer relied on mistaken license plate information); United States v. Towne, 870 F.2d 880, 884-85 (2d. Cir.), cert. denied, 490 U.S. 1101 (1989) (arrest upheld where officer relied on warrant improperly kept in "active" NCIC files); Durio v. State, 807 S.W.2d 876, 877-78 (Tex. Ct. App. 1991) (arrest and seizure upheld where officers relied on warrants later determined to have been previously executed but not

stricken). Other courts have applied the exclusionary rule in these same types of circumstances. See State v. Peterson, 171 Ariz. 333, 830 P.2d 854 (Ct. App. 1991) (arrest based on quashed 5-year-old warrant that had been mistakenly reentered in computer system); People v. Mourecek, 208 Ill. App. 3d 87, 566 N.E.2d 841 (1991) (arrest based on radio information regarding warrant quashed 30 days earlier); Ott v. State, 325 Md. 206, 600 A.2d 111, cert. denied, ___ U.S. ___, 113 S.Ct. 295, 121 L.Ed.2d 219 (1992) (arrest based on computer information regarding warrant satisfied 7 days earlier). By granting certiorari in this case, this Court can resolve these conflicts and provide guidance to the lower courts.

This Court has noted that indiscriminate application of the exclusionary rule may well generate disrespect for the law and

administration of justice. United States v. Leon, 468 U.S. at 908. Applying the exclusionary rule in this case does not serve the rule's purpose and contributes to feelings of disrespect for the law. Officer Sargent did nothing wrong. The evidence strongly suggests that a non-police agency was to blame for the error that led to Evans' arrest. The Arizona Supreme Court, however, found these factors unimportant and applied the exclusionary rule despite the absence of any deterrent effect on individual law enforcement officers. This Court should correct that error.

CONCLUSION

For the reasons stated, this Court should issue a writ of certiorari to review the judgment of the Supreme Court of Arizona.

Respectfully submitted,

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April 14, 1994

APPENDIX

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APPENDIX A:

Reported opinion of the Supreme Court of Arizona, State v. Evans, ____ Ariz. ____, 866 P.2d 869 (1994).....1a

APPENDIX B:

Reported opinion of the Court of Appeals of Arizona, State v. Evans, 172 Ariz. 314, 836 P.2d 1024 (Ct. App. 1992).....22a

APPENDIX A

STATE OF ARIZONA

v.

ISAAC EVANS.

Supreme Court of Arizona.

January 13, 1994.

ZLAKET, Justice.

The court of appeals, with one judge dissenting, held that the trial court abused its discretion in granting defendant's motion to suppress. State v. Evans, 172 Ariz. 314, 836 P.2d 1024 (Ct. App. 1992). We disagree and vacate the appellate court's opinion.

Defendant was stopped for a traffic violation on January 5, 1991. At the time, he had a suspended driver's license. Neither of these offenses, however, precipitated his eventual arrest. The police officer testified at the suppression hearing that he would not have placed defendant under arrest if a computerized records check had not indicated the existence of an outstanding misdemeanor arrest warrant in his name.

While making the arrest, the officer found part of a marijuana cigarette on defendant's person. A subsequent search of his vehicle revealed a bag of marijuana hidden under the passenger seat. Defendant was charged with possession, a class 6 felony.

The computerized record was in error. In fact, the arrest warrant had been quashed by the issuing justice court several weeks earlier. For some reason, it was not

expunged from the computer. At the suppression hearing, there was conflicting evidence concerning whether this mistake was caused by the court staff or law enforcement employees. The trial court apparently concluded that it made little difference who was at fault. Relying on State v. Greene, 162 Ariz. 383, 783 P.2d 829 (Ct. App. 1989), which applied the exclusionary rule where police personnel were negligent in maintaining computer records, the judge granted defendant's motion to suppress the evidence seized during the arrest. Thereafter, the state dismissed the charges without prejudice and brought this appeal.

The court of appeals ruled that the evidence should not have been suppressed. The majority concluded that Greene did not apply because the mistake here, more probably than not, was made by justice court employees

instead of law enforcement personnel. The appeals court relied primarily on Michigan v. Tucker, 417 U.S. 433, 94 S. Ct. 2357 (1974) and United States v. Leon, 468 U.S. 897, 104 S. Ct. 3430 (1984) in holding that "the exclusionary rule is intended to deter police misconduct and not to punish errors of judges and magistrates," and therefore should not have been utilized in this case. 172 Ariz. at 317, 836 P.2d at 1027.[1]

We do not agree that the trial court abused its discretion under the facts presented. We are unable to follow the lead of the court of appeals in dismissing

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[1] It is unnecessary to analyze here the purposes to be served by the exclusionary rule. We note only that deterrence of police misconduct is but one of the reasons that have been advanced in support of its use. See, e.g., Mapp v. Ohio, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691 (1961); Weeks v. United States, 232 U.S. 383, 392, 34 S. Ct. 341, 344 (1914).

conflicting inferences raised by evidence on the issue of whether fault rested with the justice court, the police, or both. See id. at 316 n.1, 836 P.2d at 1026 n.1. Testimony at the suppression hearing failed to clearly establish whether a telephone call from the court to the police, advising that the warrant had been quashed, was made but not entered in the record, or was never made at all. The trial judge was concerned about this gap in the proof, as evidenced by his questions during the hearing. He ultimately made no express finding with respect to responsibility for the error, apparently concluding that it did not matter. But even assuming, as did the appellate court majority, that responsibility for the error rested with the justice court, it does not follow that the exclusionary rule should be inapplicable to these facts.

Tucker is of little value here. In that case, the court was dealing with alleged violations of the 5th, 6th and 14th amendments arising from the failure of police to have given "Miranda warnings' as part of an interrogation that antedated the decision in Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).

Leon is also not helpful. There, officers obtained evidence on the basis of a facially valid search warrant issued by a neutral magistrate. The warrant was later held invalid because it had been issued on an insufficient showing of probable cause. Such a situation is distinguishable from one like this, where no warrant at all was in existence at the time of the arrest. See State v. Peterson, 171 Ariz. 333, 830 P.2d 854 (Ct. App. 1991), cert. denied, 113 S. Ct. 465 (1992); see also 1 Wayne R. LaFave, Search and Seizure § 1.3(g) at 77 (1986).

This warrantless arrest, based entirely as it was on an erroneous computer entry, was plainly illegal.

The state argues that the police could have arrested defendant for various traffic violations, and this inevitably would have resulted in the discovery of the contraband. The record clearly establishes, however, that no arrest would have occurred in the absence of the flawed computer record. At most, defendant would have received a traffic citation.

The "good faith" analysis advanced by the state is of questionable application here. This case is not about the motives of the police. The fact that the arresting officer acted in good faith is irrelevant. 2 Wayne R. LaFave, Search and Seizure § 3.5(d) at 24 (1986); see also People v. Fields, 785 P.2d 611 (Colo. 1990). The arrest was not the result of "a reasonable

judgmental error" concerning facts which might constitute probable cause. A.R.S. § 13-3925(C)(1). It was the result of negligent record keeping. Whether the erroneous computer record was the fault of police or justice court personnel should be of no consequence even though, as we have noted, evidence on this point was by no means as clear as the state now suggests.

This is also not a cause involving a mere "technical violation." A.R.S. § 13-3925(C)(2). Defendant was arrested on the basis of a nonexistent warrant, not one that was "later invalidated due to a good faith mistake." Id. See also United States v. Whiting, 781 F.2d 692 (9th Cir. 1986) (summarily rejecting extension of Leon's good faith exception to warrantless searches).

We cannot support the distinction drawn by the court of appeals and the dissent

between clerical errors committed by law enforcement personnel and similar mistakes by court employees. We are concerned here with the performance of purely ministerial functions, not the exercise of judicial discretion. While it may be inappropriate to invoke the exclusionary rule where a magistrate has issued a facially valid warrant (a discretionary judicial function) based on an erroneous evaluation of the facts, the law, or both, Leon, 468 U.S. 897, 104 S. Ct. 3430 (1984), it is useful and proper to do so where negligent record keeping (a purely clerical function) results in an unlawful arrest. Such an application will hopefully serve to improve the efficiency of those who keep records in our criminal justice system.

The dissent laments the "high costs" of the exclusionary rule, and suggests that its application here is "purposeless" and

provides "no offsetting benefits." Such an assertion ignores the fact that arrest warrants result in a denial of human liberty, and are therefore among the most important of legal documents. It is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness. As automation increasingly invades modern life, the potential for Orwellian mischief grows. Under such circumstances, the exclusionary rule is a "cost" we cannot afford to be without.[2]

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[2] In fact, the evidence suggests that this cost is insubstantial. As one commentator notes, "[t]o date, the most careful and balanced assessment of all available empirical data shows 'that the general level of the rules's effects on criminal prosecutions is marginal at most.'" 1 Wayne R. LaFave, Search and Seizure § 1.3(c) at 52 (1986) (quoting T. Davies, A Hard Look at What We Know (and Still Need to Learn) About the "Costs" of the Exclusionary Rule: The NIJ Study and Other

Even assuming that deterrence is the principal reason for application of the exclusionary rule, we disagree with the court of appeals that such a purpose would not be served where carelessness by a court clerk results in an unlawful arrest. It also seems to us an anomalous rule, indeed, that would prohibit the use of evidence illegally seized pursuant to the clerical error of a police department clerk, but would permit it if the same mistake was made instead by a court clerk.

We hold that the trial judge did not abuse its discretion, and we vacate the court of appeals' opinion.

MARTONE, Justice, dissenting.

Studies of "Lost" Arrests, 1983 Am. B. Found. Research J. 611, 622); see also Peter F. Nardulli, The Societal Cost of the Exclusionary Rule: An Empirical Assessment, 1983 Am. B. Found. Research J. 585, 606-07; Peter F. Nardulli, The Societal Costs of the Exclusionary Rule Revisited, 1987 U. Ill. L. Rev. 223, 238-39.

The court concludes that "[w]hether the erroneous computer record was the fault of police or justice court personnel should be of no consequence . . . ." Ante, at 5. Thus today the court holds that the exclusionary rule serves to deter judicial error as well as police misconduct. This proposition is directly contrary to United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405 (1984). Because I cannot agree with the court's expansion of the exclusionary rule, I dissent.

The court assumes that the exclusionary rule applies to all unlawful searches. It does not. The exclusionary rule is a "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." United States v. Calandra, 414 U.S. 338, 348, 94 S. Ct. 613, 620 (1972).

Its application "has been restricted to those areas where its remedial objectives are thought most efficaciously served." State v. Atwood, 171 Ariz. 576, 667, 832 P.2d 593, 684 (1992), quoting Calandra, 414 U.S. at 348, 94 S. Ct. at 620. Specifically, "the rule's primary purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures." Calandra, 414 U.S. at 347, 94 S. Ct. at 619-20 (emphasis added). Thus the range of application of the exclusionary rule is narrower than the range of unlawful searches.

In United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405 (1984), the Court considered whether the exclusionary rule served to deter judicial as well as police misconduct. In concluding that it did not, the Court stated:

> Judges and magistrates are not adjuncts to the law enforcement team; as neutral judicial officers, they have no stake in the outcome of particular criminal prosecutions. The threat of exclusion thus cannot be expected significantly to deter them. Imposition of the exclusionary sanction is not necessary meaningfully to inform judicial officers of their errors, and we cannot conclude that admitting evidence obtained pursuant to a warrant while at the same time declaring that the warrant was somehow defective will in any way reduce judicial officers' professional incentives to comply with the Fourth Amendment, encourage them to repeat their mistakes, or lead to the granting of all colorable warrant requests.

Leon, 468 U.S. at 917, 104 S. Ct. at 3417-18. The Court held the exclusionary rule inapplicable when police officers act in objectively reasonable good faith on a warrant later invalidated due to judicial error because "[p]enalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." Id. at 921, 104 S. Ct. at 3419.

This case falls squarely within the rule of Leon. The police officer who stopped defendant found an outstanding warrant for defendant's arrest when he ran a customary computer check. He arrested defendant and found marijuana during the search incident to the arrest. The computer gave no indication that the warrant was invalid. The evidence suggests that a justice court clerk failed to contact police department employees to inform them that the warrant had in fact been quashed. The police department was not responsible for the error. The officer arrested defendant in good faith on a facially valid warrant. Indeed, not even the court suggests that the police officer could have done anything other than arrest the defendant. It would have been misfeasance to ignore the warrant.

The court believes that Leon is distinguishable because the officers in

Leon relied on a facially valid warrant while here "no warrant at all was in existence at the time of the arrest." Ante, at 5. But the officer relied upon facially valid computer information. When the computer shows an outstanding arrest warrant, the officer is expected to make an arrest. He is in the same position as one who holds an arrest warrant in his hand. It makes no difference whether, after issuance, a warrant is quashed or otherwise invalid. In both cases the warrant is without effect, yet it appears to the officer to be facially valid. In either case, Leon controls.

The court also concludes that applying the exclusionary rule is proper here because a court employee, and not a judge, committed error. But what does it matter? The exclusionary rule applies to police misconduct, not judicial department error.

Finally, the court concludes that the police cannot advance a "good faith" argument because the arrest was not a "reasonable judgmental error" as defined in A.R.S. § 13-3925. Section 13-3925 is wholly inapplicable to this case. It expressly addresses the exclusion of evidence "because of the conduct of a peace officer in obtaining the evidence." A.R.S. § 13-3925(A) (emphasis added). Here, the conduct of the arresting officer is not challenged. Moreover, § 13-3925 was added to the criminal code in 1982 to provide a statutory good faith exception to the exclusionary rule. The United States Supreme Court sanctioned the good faith exception in 1984 when it decided Leon. After Leon, we held "that the exclusionary rule to be applied as a matter of state law is no broader than the federal rule." State v. Bolt, 142 Ariz. 260, 269, 689 P.2d 519, 528 (1984). Because

our exclusionary rule cannot be narrower than the federal rule, and because we have held it to be no broader, we do not read into § 13-3925(A) that which is not required by the federal rule.

Leon requires us to determine who is responsible for error before applying the exclusionary rule. This is true for errors on police car computers.[1] Both divisions of our court of appeals recognize that the exclusionary rule is properly limited to

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[1]For example, the Appellate Court of Illinois decided a case very similar to the one we decide today. See People v. Joseph, 470 N.E.2d 1303 (Ill. App. 1984). However, the computer error at issue in Joseph was caused by the police department. The court held that the exclusionary rule was proper because "[t]he situation in the instant case reflects a matter within the responsibility and control of police authorities who failed to update their records to accurately reflect defendant's current status." Id. at 1306.

police misconduct.[2] Today's decision, holding that the source of error is irrelevant, is a major departure from state and federal law. If it is not clear whether the police or court employees were responsible for the error, we should remand for findings on this issue. We cannot conclude that a dispositive issue is irrelevant.

To be sure, we should like to minimize

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[2]In State v. Peterson, 171 Ariz. 333, 830 P.2d 854, our court of appeals, Division 1, held that the exclusionary rule was a proper remedy to deter computer error when "[a]ny mistake was that of the police." Id. at 340, 830 P.2d at 861. Division 2 also decided the exclusionary rule was properly applied to suppress evidence found incident to an arrest caused by computer error if the error was caused by the police. State v. Greene, 162 Ariz. 383, 783 P.2d 829 (App. 1989). The court stated, "[i]f police misconduct, whether it be negligent or deliberate, caused or contributed to the arrest notation being in the computer system, the police department would be responsible for not keeping its computer entries up to date." Id. at 384, 783 P.2d at 830. Thus the divisions are not in conflict on this issue.

computer error.[3] But the way to do this is through education, training and rigorous standards. We limit the exclusionary rule to police misconduct because its costs are so high. "[H]ighly probative and often conclusive evidence of a criminal defendant's guilt is withheld from the trier of fact." Duckworth v. Eagan, 492 U.S. 195, 208, 109 S. Ct. 2875, 2882 (1989) (O'Connor, J., concurring). Its purposeless application defeats the truthfinding process, frees the guilty, and generates disrespect for the law and the administration of justice with no offsetting benefits. Atwood, 171 Ariz. at 667, 832 P.2d at 684.

I, too, am concerned with the loss of "human liberty." Ante, at 6. But the

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[3]Today we deal with computer error, not intentional misconduct. That "mischief," ante, at 6, is far more likely to be deterred by the threat of a civil action for damages than by the exclusion of evidence.

exclusionary rule will not restore liberty to the innocent and should not restore it to the guilty. I dissent.

APPENDIX B

STATE OF ARIZONA

v.

ISAAC EVANS.

Court of Appeals of Arizona, Division One.

May 19, 1992.

EUBANK, Judge.

The State of Arizona appeals from the trial court's order granting defendant Isaac Evans's motion to suppress evidence. We reverse and remand for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

On December 13, 1990, a Phoenix justice of the peace issued a misdemeanor warrant

for Evans's arrest after he failed to appear on December 12, 1990 for several traffic violations. On December 19, 1990, however, Evans did appear before a judge pro tempore, who quashed the warrant.

Under the standard procedure for quashing a warrant, a justice court clerk calls the Maricopa County Sheriff's Office ("Sheriff's Office") to inform them that a warrant has been quashed. The Sheriff's Office then removes the warrant from its computer. After calling the Sheriff's Office, the justice court clerk makes a note in the appropriate file, indicating the clerk who made the telephone call and the person that the clerk spoke with at the Sheriff's Office. In this case, there was no indication in Evans's justice court file that a justice court clerk had called the Sheriff's Office to notify them of the quashed warrant. In addition, the Sheriff's

Office also records all of the telephone calls it receives for quashed warrants. The Sheriff's office also had no record of a telephone call, informing them that Evans arrest warrant had been quashed.

On January 8, 1991, the State filed a complaint against Evans charging him with possession of marijuana, a class 6 felony. The complaint alleged that, on January 5, 1991, Evans had knowingly possessed or used less than one pound of marijuana, in violation of Ariz. Rev. Stat. Ann. ("A.R.S.") §§ 13-3405, -3401, and -3418.

On March 27, 1991, Evans filed a motion to suppress all evidence seized from him on January 5, 1991. At the evidentiary hearing on the motion to suppress, Officer Bryan Sargent testified that, on January 5, 1991, he stopped Evans for driving the wrong way on a one-way street. When he asked Evans for his driver's license, Evans

replied that he did not have a license, because his license had been suspended. After conducting a records check, Officer Sargent found that Evans's driver's license had in fact been suspended and that there was a valid misdemeanor warrant for his arrest. While arresting Evans, however, Officer Sargent had difficulty handcuffing him. Therefore, he asked Evans to relax one of his hands. When Evans relaxed his hand, he dropped a marijuana cigarette. Office Sargent and another officer then searched the passenger compartment of the car and found a bag of marijuana under the passenger seat. The officers also found a package of cigarettes, rolling papers, and marijuana residue in Evans's passenger's purse.

In ruling on the motion to suppress the evidence, the trial court relied exclusively on State v. Greene, 162 Ariz. 383, 783

P.2d 829 (App. 1989). The trial court found that our facts were indistinguishable from the facts in Greene and, therefore, granted Evans's motion to suppress the evidence. The trial court also granted the State's motion to dismiss without prejudice.

ISSUE PRESENTED

The State presents one issue on appeal:

Did the trial court abuse its discretion in granting Evans's motion to suppress the evidence?

STANDARD OF REVIEW

This court will not reverse the trial court's ruling on a motion to suppress unless the trial court abused its discretion. State v. Prince, 160 Ariz. 268, 272, 772 P.2d 1121, 1125 (1989); State v. Coats, 165 Ariz. 154, 158-59, 797 P.2d 693, 697-98 (App. 1990). On a motion to suppress evidence, this court must view the facts in a light most favorable to the trial

court's ruling, and the trial court's ruling will not be disturbed absent clear and manifest error. State v. Gerlaugh, 134 Ariz. 164, 167, 654 P.2d 800, 803 (1982).

DISCUSSION

The State argues that the trial court abused its discretion in granting Evans's motion to suppress. It contends that the facts in Greene are distinguishable from the facts in this case, because, in Greene, the police department was negligent in maintaining the computer records, whereas in this case the justice court employees were negligent in failing to inform the Sheriff's Office that Evans's arrest warrant had been quashed.[1] The State also argues

[1]The trial court, however, indicated that two different inferences could be drawn from these facts. First, a justice court clerk could have failed to call the Sheriff's Office to inform them of the quashed warrant. Alternatively, a justice court clerk could have called the Sheriff's Office, informing them of the quashed

that the arresting officers had no reason to know that the arrest warrant had been quashed. Further, it contends that the police officers were acting on a good faith belief that the arrest warrant was valid. Therefore, the State argues that, based on the good faith exception to the exclusionary rule and section 13-3925 of the Arizona Revised Statutes[2], the trial court abused its discretion in granting Evans's motion to suppress.

Evans argues that the trial court did not abuse its discretion in granting his motion to suppress. He contends that the facts of this case are indistinguishable from the facts of Greene. Thus, he argues that the trial court properly granted his motion to suppress.

warrant, and then failed to record the telephone call in Evans's justice court file.

[2]See infra pp. 8-9.

I.

In Greene, the South Tucson Police Department stopped appellee's van for a traffic violation. 162 Ariz. at 383, 783 P.2d at 829. The records check indicated that appellee had an outstanding City of Tucson arrest warrant based upon appellee's failure to appear for a previous traffic violation. Id. Greene was arrested and handcuffed, and a search of his pockets revealed narcotics. Id. The officers subsequently learned that the warrant had been quashed by Tucson City Court eight months earlier. Id. Appellee later moved to suppress the narcotics seized during the search, and the trial court partially granted his motion to suppress. See id. In affirming the trial court, the Arizona Court of Appeals stated as follows:

> If one were to look only at the actions of the arresting officer of the South Tucson Police Department,

> the conclusion would be that the ends of the exclusionary rule would not be advanced by holding the evidence inadmissible. However, under the facts of this case one must look beyond his actions and focus on the actions of the South Tucson Police Department. If police misconduct, whether it be negligent or deliberate, caused or contributed to the arrest notation being in the computer system, the police department would be responsible for not keeping its computer entries up to date. No evidence was presented to the trial court establishing that the police department was blameless in having the arrest warrant notation in its computer system. Although the state suggests that such was the case, it concedes that the record is silent in this regard. Accordingly, the ends of the exclusionary rule would be furthered in an appreciable way by holding the evidence inadmissible because such a holding would tend to deter the South Tucson Police Department from deliberately or negligently failing to keep its paperwork or computer entries up to date, exposing persons to a possible wrongful arrest.

Id. at 384, 783 P.2d at 830.

The facts in this case are distinguishable from the facts in Greene. In Greene, the court upheld the suppression of the evidence

to "deter the South Tucson Police Department from deliberately or negligently failing to keep its paperwork or computer entries up to date, [thereby] exposing persons to a possible wrongful arrest." Id. In this case, however, there is no evidence that the arresting officers or the Phoenix Police Department were negligent in any way. In fact, the police officers would have been negligent had they not arrested Evans for his outstanding arrest warrant. Further, in Greene, the court upheld the suppression of the evidence, because "[n]o evidence was presented to the trial court establishing that the police department was blameless in having the arrest warrant notation in its computer system." Id. However, in this case, the State presented evidence indicating that the justice court employees, not the Phoenix Police Department, were negligent in failing to inform the Sheriff's

Office that Evans's arrest warrant had been quashed. For these reasons, the facts in Greene are distinguishable from the facts in this case.

II.

At the evidentiary hearing, the trial court appeared to overgeneralize the rationale behind the exclusionary rule. The trial court specifically stated as follows:

> [The Greene court] make[s] it clear that what [it is] trying to do is to deter negligence; in that case, to deter the negligence of the . . . South Tucson Police Department. . . . And in this case, perhaps the negligence of the Justice Court, or the negligence of the Sheriff's office. But it is still the negligence of the State.

The United States Supreme Court has repeatedly stated that the purpose of the exclusionary rule is to deter unlawful police conduct. E.g., United States v. Leon, 468 U.S. 897, 916 (1984) (emphasis added); Michigan v. Tucker, 417 U.S. 433, 446 (1974)

(emphasis added). Although this case involves an arrest warrant and Leon and Tucker both involve search warrants, the Arizona Court of Appeals has concluded that Leon may also apply in an invalid arrest warrant situation. See Greene, 162 Ariz. at 384, 783 P.2d at 830. In Michigan v. Tucker, the Court stated that, when a police officer acts in complete good faith, "the deterrence rationale [of the exclusionary rule] loses much of its force." 417 U.S. at 447 (emphasis added). In Leon, the Court clarified the good faith exception to the exclusionary rule, stating that if a police officer's actions are objectively reasonable, "excluding the evidence will not further the ends of the exclusionary rule in any appreciable way . . . ." 468 U.S. at 919-20 (quoting Stone v. Powell, 428 U.S. 465, 539 (1976) (White, J., dissenting)) (emphasis added).

We find that the arresting officers' actions in this case were objectively reasonable. See id. The arresting officers had absolutely no way of knowing that Evans's arrest warrant had been quashed. Further, the exclusionary rule is intended to deter police misconduct and not to punish errors of judges and magistrates. Id. at 916. Similarly, we believe that the exclusionary rule is not intended to deter justice court employees or Sheriff's Office employees who are not directly associated with the arresting officers or the arresting officers' police department. See id. In this case, excluding evidence because of a clerical error outside of the control of the Phoenix Police Department would not deter the justice court employees or the Sheriff's Office employees from making such errors in the future. In fact, a justice court employee testified that this sort of error occurs

only about once every three or four years. Moreover, excluding evidence would not deter the Phoenix Police Department from relying on invalid arrest warrants, because there was not indication that the arresting officers or the Phoenix Police Department were negligent in relying on Evans's arrest warrant. Therefore, the purpose of the exclusionary rule would not be served by excluding the evidence obtained in this case.

III.

Arizona also has a good faith exception statute. See A.R.S. § 13-3925 (1989). In pertinent part, section 13-3925 provides as follows:

> A. If a party in a criminal proceeding seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the proponent of the evidence may urge that the peace officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact if

> otherwise admissible.
>
> B. The trial court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation.
>
> C. In this section:
>
> 1. "Good faith mistake" means a reasonable judgmental error concerning the existence of facts which if true would be sufficient to constitute probable cause.
>
> 2. "Technical violation" means a reasonable good faith reliance upon:
>
> . . .
>
> (b) A warrant which is later invalidated due to a good faith mistake.

Id. The Arizona Court of Appeals has held that A.R.S. section 13-3925 is "both within the power of the legislature to enact and offends neither the state nor federal constitutions." Coats, 165 Ariz. at 158, 797 P.2d at 697. Under Arizona's good faith exception statute, we find that neither

the arresting officers nor the Phoenix Police Department were negligent in arresting Evans or in searching his person. See A.R.S. § 13-3925 (1989). We also find that the trial court abused its discretion by suppressing the evidence. See id. Moreover, we conclude that A.R.S. section 13-3925 is inapplicable to the conduct of the justice court employees or the Sheriff's Office's employees in this case. See id.

Therefore, we find that the trial court abused its discretion in granting Evans's motion to suppress.

CONCLUSION

For the foregoing reasons, we find that the trial court abused its discretion in granting Evans's motion to suppress evidence. Therefore, we reverse and remand for further proceedings consistent with this opinion.

CLABORNE, J., dissenting.

I respectfully dissent. The record is clear on several points. First, the arrest of Evans was only because of the outstanding warrant reflected by the computer. Second, it is not clear at all that the justice court failed to notify the sheriff that the warrant had been quashed by the justice court. Nevertheless, the responsibility for a valid warrant to arrest remains with those effecting that arrest. Third, the arrest warrant had been quashed for approximately twenty-four days.

First, I feel that State v. Greene, 162 Ariz. 383, 783 P.2d 829 (App. 1989), controls this case. A fair reading of that case indicates that if the police are negligent in failing to keep their computer entries up to date, the evidence obtained by an arrest based on a warrant which had been quashed should be suppressed. The trial court was well within its discretion in

coming to the conclusion that they could have been negligent.

Second, although the case is not directly on point, a plethora of cases dealing with invalid warrants and police computer entries was collected in State v. Peterson, 94 Ariz. Adv. Rep. 58, 59 (App. Sept. 5, 1991).

Finally, Peterson held that the "good faith" exception to the exclusionary rule permitting the introduction of evidence obtained through invalid arrest warrant does not apply to this kind of case, either on the basis of the Arizona statute or on the basis of United States v. Leon, 468 U.S. 897 (1984). It is the responsibility of the police to update their records, and such a failure should not overcome a defendant's constitutional right to a valid warrant or probable cause before an arrest and search. There is a growing problem with police reliance on electronically

recorded and disseminated criminal files. See People v. Joseph, 470 N.E.2d 1303 (Ill. 1984). There is nothing in this record which would justify disturbing the discretion of the trial court in suppressing this evidence under these facts. I would affirm.